

THE HON'BLE SRI JUSTICE V.V.S.RAO

-
WRIT PETITION No.10505 of 2007

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Dated:02.07.2007

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Between:

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Smt.Pillala Appalanarasamma, W/o.Sri Nooka Raju.

...Petitioner

and

The District Collector, Visakhapatnam District,
and others.

...Respondents

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ORDER:

The petitioner herein is statedly the owner of land in Survey No.370/1 & 2 situated at Maredupudi Village of Anakapalle Mandal in Visakhapatnam District. She, along with others, appears to have constructed houses on the said land. In the northern side of the houses, it is alleged, there is a strip of private land, and beyond that, there is a hill stream called Kondagedda or Vagu Poramboke, to which, rain water is carried from the hills to Yarukodu tank. The tank is an irrigation source. It is alleged that the fourth respondent has a house upstream the water channel. He planned to construct a compound across the channel to come to his house. The Sarpanch is a distant relative of the fourth respondent. Therefore, the fourth respondent in collusion with the Sarpanch tried to lay a road from Vagu Poramboke to cater his needs. The villagers objected for the same on the ground that the construction of the road on the Vagu Poramboke would result in inundation of their houses. They also made a representation to the District Collector on 28.03.2006. When a complaint was also made in public hearing in Spandana on 25.12.2005, the fourth respondent stopped the construction temporarily. On 08.05.2007 the fourth respondent came with Police persons and threatened not to object about laying of the road. The petitioner along with others, therefore, got to have issued a legal notice on 09.05.2007, in vain. It is alleged that the third respondent in

collusion with the fourth respondent is laying down the road on the northern side of the petitioner's property in Survey No.370/1 & 2.

This Court while ordering notice before admission ordered *status quo*. The Gram Panchayat has moved W.V.M.P.No.1346 of 2007 to vacate the interim order. The Mandal Revenue Officer has also filed counter affidavit.

The Mandal Revenue Officer denied the various petition averments. He states that there is a proposal by the Gram Panchayat to lay a cement road on the already existing road by utilizing the gravel available in the adjacent poramboke land, and that no bund was constructed across the stream. The allegations that the stream carries water to Yarukodu tank, and that if the road is constructed it will inundate the houses are denied. It is stated that after receiving the petition from the petitioner and others, the Mandal Revenue Inspector and Mandal Surveyor inspected the land and reported that the fourth respondent did not encroach upon any portion of the Gedda Poramboke land.

In the counter affidavit filed along with W.V.M.P, the Sarpanch alleges that no road is being laid in the petitioner's land in Survey No.370/1 & 2, and that the existing pathway in Kondagedda Poramboke between the land of the petitioner and stream is being utilized for formation of the road for the benefit of the villagers by utilizing the funds sanctioned for the road. The allegation that there is a stream between the land of the petitioner and Gedda Poramboke land is denied. The Sarpanch stated that the existing stream leads to burial ground and between the stream and the petitioner's land, the passage is being used for the road.

The petitioner has not filed any reply affidavit denying the counter averments made by respondent No.2 as well as respondent No.3.

Learned Counsel for the petitioner submits that when the land is classified as Vagu Poramboke (Kondagedda Poramboke), the same cannot be converted into a road for the benefit of only one individual. According to the learned Counsel, if the free flow of water from the stream is prevented, it is likely to endanger the lives of the petitioner and others, who have constructed thatched houses in the land comprised in Survey No.370/1 & 2. **Opposing** these contentions, the learned Standing Counsel for Gram Panchayat submits that the stream flows into burial ground and not into the petitioner's area. It is further pointed out that the road is being constructed by the Government funds in the existing pathway between the petitioner's land and the stream.

The dispute in this Writ Petition is essentially a question of fact. Whether the Gram Panchayat is constructing the pathway to benefit

the fourth respondent and whether such pathway is being constructed in the Kondagedda Poramboke? If there is a Vagu Poramboke or a stream, whatever name it is called in the local parlance, from common sense point of view, the same cannot be converted into a pathway or a cement road, or there should be proper drainage for rainwater from the hill areas. The authorities must keep in mind this aspect of the matter while proceeding with the construction of the road. Expect making such observation, no relief can be granted to the petitioner, as the case involves questions of fact.

The Writ Petition is accordingly dismissed. No costs.

(V.V.S.RAO, J)

02.07.2007

vs